

STATE ARCHIVES AND RECORDS COMMISSION
Minutes of the Quarterly Meeting
September 14, 2006
Department for Libraries and Archives

The State Archives and Records Commission met at 10:00 a.m., Thursday, September 14, 2006, in the Board Room, Kentucky Department for Libraries and Archives (KDLA), 300 Coffee Tree Road, Frankfort, Kentucky.

Members present: James A. Nelson, Chairman; Sandra McAninch, representing the Kentucky Library Association; Jennifer Gregory, representing regional colleges and universities; James Kastner, representing the Kentucky Historical Society; and Terry Birdwhistell, representing the University of Kentucky.

Representatives present: Sally Hamilton representing Laura Owens, Secretary, Education Cabinet; Brandon Haynes, representing Joseph E. Lambert, Chief Justice, Supreme Court; Amye Bensenhaver, representing Gregory D. Stumbo, Attorney General; Bryan Lykins, representing Crit Luallen, Auditor of Public Accounts; Leslie Smith, representing Robert Sherman, Director, Legislative Research Commission; Charles Robb, representing Mark Rutledge, Commissioner of Technology; and Glenna Mays, representing Brad Cowgill, State Budget Director.

Members not present or represented: Emily Dennis, representing Citizens-at-Large; Leah Hawkins, representing Citizens-at-Large; Sarah K. M. Adams, representing Citizens-at-Large; and Dean Johnson representing local governments.

Public Records Division staff present: Richard N. Belding, Director, Public Records Division; Barbara Teague, Manager, Archival Services Branch; Glen McAninch, Manager, Technology Analysis and Support Branch; Jim Cundy, Manager, State Records Branch; Tim McIntosh, Acting Manager, Micrographics Branch; Mark Myers, Electronic Records Specialist; Pat Brookman, Records Analyst; Thomas Getman, Records Analyst; Cynthia Snapp, Administrative Specialist.

Guests present: Scott Porter, counsel for the Department for Libraries and Archives; Michelle Harrison, Office of the Attorney General.

Nelson called for introductions by those present.

Mr. Kastner made a motion to accept the minutes from the June 1, 2006 meeting, seconded by Mr. Lykins. The vote by the members and representatives present was unanimous.

NEW OR REVISED RECORDS RETENTION SCHEDULES

Environmental and Public Protection Cabinet – OFFICE OF CHARITABLE GAMING

Brookman presented this schedule change. The change is to Series 04898, Investigative Case File. The retention is being changed from Indefinite - Transfer to State Records Center two years after case closure, and all appeals have been exhausted. Maintain at Records Center for 3 years. Total Retention – 5 yrs. The proposed retention is Indefinite – Transfer to State Records Center 15 years after case closure, and all appeals have been exhausted. Maintain at Records Center for 65 years. Total Retention – 80 yrs.

The Division of Charitable Gaming was created in 1994, as part of the Justice Cabinet. In 1998, it was placed in the Environmental & Public Protection Cabinet. The Office is empowered to license and regulate the conduct of charitable gaming and to license and regulate charitable gaming organizations, facilities, manufacturers and distributors in Kentucky (KRS 238.510). It also conducts financial auditing and undercover investigations.

The Division of Enforcement has two branches, Audit and Investigation. The division has strong enforcement powers, which include examining charitable gaming supplies and equipment and conducting in-depth audits and investigations. In the Investigation Branch, there are five investigators located throughout the state. They investigate complaints and allegations of criminal wrongdoing. The results of these investigations could result in administrative action or civil and/or criminal action. When the office investigates a complaint, it cooperates with a federal prosecutor, federal law enforcement agencies, the Kentucky State Police and local law enforcement.

Brookman said that the change in the retention for this series is intended to match the retention of Series 00145, Criminal Case Report File, on the retention schedule of the Kentucky State Police. This is due to the high likelihood of repeat offenders in this area, even after arrest and conviction.

Ms. Hamilton made a motion to adopt the change, seconded by Ms. McAninch. The vote by members and representatives present was unanimous.

Justice and Public Safety Cabinet – DEPARTMENT OF CORRECTIONS

Brookman presented this schedule addition. The series being added is Series 05513, Inmate Psychological Testing File.

The Department of Corrections, which is governed by KRS Chapters 196 and 197, is responsible for managing the daily operations of the state correctional institutions and a variety of community-based services. Its mission is to provide secure, humane incarceration for felony offenders, professional probation and parole supervision, and an opportunity for offenders to acquire skills that facilitate non-criminal behavior. The Department operates twelve adult correctional institutions and oversees three private prisons, with a combined maximum capacity of about 11,127 inmates. The Department administers provisions of KRS Chapter 441 relating to jail standards, training of jailers and jail personnel, and jail planning and construction, and

may contract with a county fiscal court or local or regional correctional authority to house misdemeanants and persons awaiting trial or sentencing.

Brookman said that this series documents psychiatric treatment of inmates and is maintained separately from Series 04065, Inmate Medical File. The Inmate Psychological Testing Program is usually completed within one year, though some inmates take longer, and the cases are closed once the program is completed.

Hamilton made a motion to adopt the schedule addition, seconded by McAninch. The vote by members and representatives present was unanimous.

General Schedule for State Agencies – Miscellaneous Records

Cundy presented these Schedule revisions. Myers worked on these changes. A change in retention is proposed for Series M0002, General Correspondence from Indefinite, Retain no longer than two years, to two (2) years. Changes to Series M0001, Official Correspondence and Series M0018, Informational and Reference Material represent changes in language to clarify the nature of the record series rather than changes in retention or disposition.

A General Schedule is a class of records retention schedule which governs the retention and disposition of specified records common to several or all public agencies.

Cundy said that this change and the modifications represented were changes to series for state agencies that involve correspondence of some type: M0001 is Official Correspondence, which documents official agency business or agency history; General Correspondence documents day-to-day operations of the agency; and Informational and Reference Material encompasses a wide range of material, among which is correspondence that is not necessarily business related, but that occurs while conducting agency work. The goals of these changes are basically three: one, to distinguish effectively among these various series so that it's clearer to agency staff which series a given piece of correspondence will fall under; two, to indicate the prevalence of e-mail as a correspondence medium, as staff has done on the revised Description and Analysis forms; and three, to change the retention of general correspondence, or routine correspondence, from what is currently "Retain no longer than two years" to just a flat two years. Now, as the phrase "retain no longer than two years" could be broadly interpreted, state agency staff could destroy general correspondence as soon as the next day, after receiving it or after sending it. What is sought is a defined time period to eliminate any confusion along those lines, or any problems along those lines.

Nelson then noted that Commission member Emily Dennis was not able to come this morning, but had sent him an e-mail the previous night. Cundy read it into the minutes:

"I write to express my concern in that the proposed retention period of two years for general correspondence may present the state with the unintended consequences of (1) extreme expense

to agencies for retention of electronic records; and (2) subjecting the state to spoliation instructions in lawsuits in the event a state worker fails to save his or her general electronic mail correspondence according to the state's general records retention schedule and the correspondence is deemed to have been discoverable in a lawsuit. I trust this change has been well-thought out and is supported by sound business principles. However, I doubt the average state worker with access to a computer has any concept of what this means, and if a plan for implementation is not in place that includes informing all state workers with access to a computer of this change, it could very well cost the state and all taxpayers a lot of money in the long run."

Cundy noted that Dennis' concerns were valid and important, and that a number of similar points had been raised at the Advisory Committee meeting of the previous week. Cundy observed that his response, and that of division staff, was essentially that these issues apply to any record, although he acknowledged that there was a greater volume of correspondence than there was of just about any other record. Second, he agreed that the matter was one of education and that division staff plans to distribute this change widely, to all agency Records Officers, and to follow up on that with training and consultation to the extent that agencies need it. Cundy said that staff recognized that this represented a significant change, that agencies would need, in all likelihood, a substantial amount of guidance to adhere to the policy, and that staff was fully prepared to go ahead with whatever needed to be done.

Belding asked Cundy if it wasn't worth noting that this period was also the retention that has existed for some time on the Local Government Schedule for General Correspondence and so more than 3,000 offices at the local government level have had to abide by this for some time. Cundy agreed that it was.

Nelson asked what concerns had been expressed by Advisory Committee.

Cundy said they had largely been along the line of the concerns of those raised by Dennis: that this might be, or could conceivably be, unduly burdensome to agency personnel having to track correspondence for two years. Cundy mentioned that there had been another concern raised and invited Bensenhaver to discuss it.

Bensenhaver said it was not as much of an issue to her now, that she was more interested in the broader, larger issues. Cundy indicated that the other main point was the nature of informational and reference material. He said that the main points as he understood them were that this represented an awfully large volume of material and that the department needed to ensure that state agency staff was (A) aware of the change, and (B) able to comply fully. He said staff was prepared to do that.

Myers observed that as a person who does a lot of the training, he would say that Dennis' comments about education and use of correspondence already exist today, regardless of whether the Commission elects to support this change or not. He said that most state officials did not currently view their e-mail as correspondence. Myers said that he got looks of surprise every

time he said that, regardless of what the retention period might be. He thought that it was an educational issue, that e-mail is a public record and that it needs to be maintained as such. His concern was that there was a lot of confusion over the up-to-two-year retention period, because he thought that, as Cundy had said, it opened the door to criticism of the sliding scale of retention times. If one agency kept e-mail for six months and another kept it for two years, what was the justification for the difference between the two?

Myers noted that as he had said in the past, he personally didn't care what the retention period might be; he just wanted to remove the "up-to" part of the language and make it a flat retention period. He said that he thought that this had been brought up a few quarters previously when the Commission was just discussing the change in general correspondence. He said that what had been recommended to the Commission on official correspondence and informational and reference material did not involve changing the retention periods but modifying the descriptions of the two to help explain them a bit better, incorporate e-mail into the descriptions, and then make a differentiation between the three. Myers recalled that the cost issue had been raised earlier about general correspondence. He reiterated that he thought that the burden was on departmental staff to train people on how to properly use e-mail, not just from the standpoint of knowing how to use Outlook, but actually knowing what to send and receive through e-mail. He believed that there was a lot of casual correspondence that was being sent that was not general correspondence and that could be deleted on a regular basis. The problem was that people just didn't do it. He said that this was why staff was including the informational and reference material section in the discussion, as that was where that type of material might logically fit in and the retention period for that is shorter than that used for general correspondence.

Cundy emphasized that staff was going to make it as clear as possible on the retention schedule that informational and reference material does include more casual correspondence.

Birdwhistell asked, with regard to training employees in the handling of general correspondence, that is, keeping it two years, how staff would be instructing them to keep it for two years.

Myers said this was a question which was still being examined. He said it would depend in part on how an agency's IT systems were set up. He mentioned that the model that staff had used in the department's e-mail guidelines was similar to the one present at the department, where all of the user accounts are on the department's network drive. Myers emphasized that two years of correspondence can be managed within Microsoft Outlook using the software's folder structure. He said that if more significant correspondence was involved, it should be put somewhere else, if it was at a repository of permanent records. For everyday correspondence, he hesitated to recommend deleting folders, that is, setting folders to delete after two years, because one really needed to make sure that what's in that folder is in fact deleted. Myers said that Microsoft Outlook was a rudimentary document management system and could be used as such. He said one problem the department faced was with agencies that may be in a total network environment or have some other way of keeping e-mail.

Nelson said that this raised good questions and recalled that he had met earlier in the week with Belding, McAninch, and Cundy to discuss his transition to retirement and what he needed to do with all of his electronic records. He said the emphasis needs to be on when people start work, that they need to understand how to deal with their records from the outset, not come back after twenty-six years and try to address the issue. He said he had used folders but still had significant decisions to make concerning what correspondence was of what category. He believed it was a question that the Commission needed to address.

Belding said he wanted to reinforce what Nelson had just said, that department staff has discussed this issue, and that this has been part of the language that staff has regularly used in instruction with agencies. That is, to really be credible in one's records management, it needs to be practiced on a day-to-day basis; it needs to be something other than an episodic event that occurs when someone leaves an agency or once in a blue moon. And staff is certainly not underestimating that it's a continuing challenge, but it's a much more manageable challenge if it's something that employees handle as a part of regular daily business rather than something that is left to grow to be a substantial issue. Belding noted, in that regard, that Nelson had mentioned that communication would be with agency Records Officers. He said it would also be with agency heads in the context that the statute explicitly assigns agency heads with the responsibility for the implementing and maintaining an ongoing records management program, and certainly, application of the schedule would be a core part of that. Belding said that the department really needs their cooperation across the board.

Bensenhaver asked how quickly departmental staff envisioned this kind of implementation/education process getting underway. Cundy said that he would prepare a draft communication to agencies shortly and look at putting a revised version of the schedule on the web soon thereafter, should this recommendation be approved.

Myers reiterated that he generally talked about e-mail in every training presentation he gave. He said he had just spoken this morning to staff of the Criminal Justice Training Center, meeting in the department at that moment. He noted that another issue mentioned at the Advisory Meeting, and touched on in Dennis' letter, was the fact that this action is pushing the responsibility of keeping these records down to the employee. Myers said that would be true for any employee with the ability to hit an enter or delete key. He noted that when he joined state government, he was trained how not to sexually harass his coworkers and how not to kill his coworkers, but he wasn't trained on what to records to keep and what not to keep in terms of what is legally required by the statute, even though, as public officials, staff is required by statute to keep records. He identified that as a major continuing challenge that staff has with all electronic records. E-mail just happens to be the most visible.

Hamilton noted that she had been in government for thirty years and hadn't killed anybody or harassed anyone, but that she could guarantee that she hadn't kept the right thing. She said she didn't think employees had any idea at all what they should be keeping and what they shouldn't be keeping. She mentioned the recent merit system investigations and that with all the Blackberries, some people were probably keeping everything and others were likely keeping

nothing. Hamilton thought that Commission members were really misleading themselves if they thought there was anybody who knew what they're supposed to be doing in this area.

Birdwhistell observed that at the University of Kentucky (UK), they had had an administrator whose motto was "When in doubt, throw it out," and that he thought that the leadership that department staff had taken on the issue was so important. He said his question was not about the goal. Rather, it was about the shared concern of how the department and Commission could achieve that goal, how to get there. In terms of general correspondence, from his experience at UK with e-mail, just trying to capture official correspondence had been a nightmare, and with that in mind, he hoped that the Commission and department wouldn't confuse people in any way. He believed that it was going to take much more training to reach employees and help them distinguish between official and general correspondence and to make sure that official correspondence was secure and regularly captured. He said the technology part that allows employees to, instead of just printing out every e-mail saved, to somehow preserve it more permanently needs to operate better.

Myers noted that staff conducted a survey a couple of quarters ago, when the issue was first brought up, of what other states' retention practices were with regard to general correspondence and basically it ran the spectrum, from about thirty days to from three to five years. He thought three years worked out to be the average. Cundy added that he managed to find online the retention periods for the equivalent of general correspondence for thirty-three states, and the minimum retention was "destroy when no longer useful," and the average seemed to be between two and five years, although he found it as high as ten years. There were only two other states that had a retention of two years, but he believed that two years was certainly acceptable.

Nelson asked whether the two year period had been a problem with the Advisory Committee, and the general response was, no. Bensenhaver said that she had raised a lot of the issues in the Advisory because her office has had just a large volume of appeals in the past year or so involving access to e-mail at all levels. The most recent actually involved some local agencies in Lexington that didn't fully understand, or even remotely understand, their records retention obligations and in particular, e-mail, because it was, as she said, a kind of unique creature. Bensenhaver said her fundamental concern was that normally, when you have legislation that passes, there's a period of time for education before implementation and if this decision is immediately effective, she worried that there could potentially be improper destruction of records as soon as that afternoon.

Belding asked whether she were recommending that, if there were a vote in favor of a revised retention period, that it might be wise to defer actual implementation to a later date down the road. Bensenhaver said she didn't know if that had ever been done. Robb offered that he would make a motion to that effect. Bensenhaver asked Robb whether he had any concerns about the impact of such a decision on the Commonwealth Office of Technology (COT). Robb said he believed that COT could store these records. He said he believed that if people were serious about implementing this revision, it would ease problems rather than create problems.

However, he was skeptical that it would be implemented according to the instructions. He thought that, by-and-large, it would be ignored. Robb observed that currently, there is a very wide practice. He said that some agencies may already have guidance, and some agencies may have fairly knowledgeable employees, but that in his opinion, that was definitely not the norm. It seemed to Robb that if the message to agencies was "By the end of X amount of time, we expect to fully adopt this," and then an education and training program were done before the requirement implementation date was reached, the change would be much more credible and there would be much more uniform execution of it.

Belding asked Robb whether he was prepared to attach a specific time period to his motion. Robb said he wasn't sure what would be reasonable. He thought that if you brought agency leaders and legal staff together to discuss it, the department would learn a lot and its educational opportunity would be significant. Among other things, he felt the department would learn what the pain points would be and why there's such varying practice. He said there might be a very good reason why one agency is getting rid of this material sooner than another, based on the business that they're in. He asked what the federal policy, under the National Archives and Records Administration (NARA) was on this, and Cundy responded that he didn't know.

Myers noted that one of the problems with using NARA's retention schedules was that they break correspondence down into a number of different categories, from casual and routine on up, and that it all had different retention periods. Myers couldn't recall the exact retention periods, but he emphasized that this was not what the department was recommending. Robb still wished that he knew more about that, what the range of their retention periods was.

Haynes said he liked the direction of the discussion and that he had a practical question, whether it would be COT meeting with agencies to let them know it's required or KDLA meeting with them to let them know what resources would be available to assist them. Cundy made it plain that it would be KDLA. Haynes asked what kind of time period would practically work for KDLA staff so that it could set up what was needed. Cundy thought that this was a very good question. He said his staff reached agencies through their appointed records officers and that one of the options he had had on his mind recently was conducting training sessions with groups of records officers, conducting larger scale training sessions. Normally, he said, his staff would meet with agencies on a one-to-one basis, but this initiative would require more than that, obviously. He thought that what was key would be getting the records officers to disseminate the information at their respective agencies and actually getting the records officer to come to the training, although he thought that would be less of a problem. Cundy felt that his staff had good relations with most records officers and they would make themselves available for the training. He acknowledged that broad dissemination of relevant information would be a problem. Sending a statewide e-mail, alerting a wide audience to these developments, was mentioned as a possibility.

Hamilton agreed with Robb's observations. She said that in her office, they would speak with their general counsel on this and not go to their records officer. She indicated that of course, the records officer would be part of the operation, but her primary advisor on substance would be

her cabinet general counsel, Jeff Mosley. She mentioned her reliance on Mosley during hiring discussions and personnel issues and records matters related to those areas, and that she just felt more comfortable seeking his advice on issues of this nature and didn't believe that the records officer could help her.

Myers said that both he and Cundy had addressed the State Government Bar Association specifically about e-mail management and about records management generally. He recalled that when KDLA sent out the current e-mail guidelines, published three or four years ago, KDLA staff got one set of responses from IT personnel and a completely different set of comments from the agencies' legal staffs. He found that the legal people were more in tune with what KDLA was proposing, from a records management standpoint with e-mail, than the IT people were, whose reaction generally was, "Oh, there's no way we can do this."

Hamilton observed that the world had changed in three years, and Myers concurred that indeed it had. Hamilton said that what she meant was that everybody had become real sensitive about e-mail and that life is a lot different today. With that in mind, and with the high profile of e-mail currently, she said she would hate to see KDLA lose this opportunity, because she felt people would listen right now. She said she didn't mind having a delay in implementation, so that KDLA can get to people, but she expressed the hope that it wouldn't be too long, because she didn't want the agency to lose the opportunity. Birdwhistell agreed with that, but he said that this indicates how important it is to get it just right, because if the opportunity is missed now, the next time, people will be skeptical.

Robb observed that there was leadership and then there was being out on a limb. Birdwhistell said he wanted to be very clear, because he had been for this action for some time, and he was aware that at the federal level, there had been an uneven record of success with similar measures. He thought this was a different situation; he said he knew that it was sort of arbitrary where you set that retention date, but that anything that helps achieve this goal is what's desired, and it's important not to miss the opportunity.

Myers recalled that staff had worked with COT and with the Electronic Records Working to examine the software for e-mail management and for records management generally and that even with that and with the current state of the industry, staff still relies on end users to say, "Yes, this is a record. It needs to go here." Once employees do that, then it can be managed by a system administrator. But the process still takes a person to say yes or no. And Myers noted that regardless of what decision was made on retention, KDLA would still face that training issue.

Birdwhistell said that just for the universities alone, in terms of training, it would be a huge undertaking. Cundy noted that the General Schedule didn't apply to universities and that on the existing University Model Schedule, the retention on the comparable series still reads, "Retain no longer than two years." Cundy said it would be addressed at the December meeting of the Commission.

Myers said that the original impetus for the change was the discrepancy between state and local schedules, with the local schedule setting the retention as a firm two years and personnel in state agencies being somewhat confused as to the application of the “up to two years” retention..

Bensenhaver said she would like to participate in any training sessions that have a broad enough reach to discuss the open records implications of the change, because there really are significant open records implications based on what had been said over the last several months about the requirements for recovery, the cost to the agency, etc. She thought that the most recent appeal her office had received was going to be appealed to Circuit Court. Dennis had already told her so. She mentioned that it involved casual e-mails exchanged by public employees, so they would not be subject to the two year retention, but they had not been deleted from the user’s computer. Bensenhaver said that the agency had been told by COT (and she was unsure as to whether Robb could confirm this information) that it was something like \$1,000 per day to try to recover e-mails on a backup tape. Robb acknowledged that it was expensive.

Bensenhaver said that it was their decision that if there were proof of improper records destruction, then there was a requirement on the part of the agency, if the records can be recovered on the backup tape, that they incur the expense to recover them, that they take those measures. That could be expensive to the agency, she observed, and that was why she was concerned about setting the effective date for the implementation of such a change.

Myers noted that this was a big issue in the private sector as well and mentioned Morgan Stanley and Arthur Anderson, among others, as firms which had felt the impact. He said that the federal courts had just approved rules of civil procedure which dealt with that kind of discovery/recovery issue because discovery had almost become a weapon of sorts in litigation. He described a situation in which a multinational company was approached and all their e-mails for a ten year period were requested in discovery, and that they were going to settle, rather than deal with the backup issues and associated costs. Bensenhaver asked for clarification on how agencies would be charged for recovering e-mail messages from backup tapes, in the event of an open records appeal involving improper records destruction. She said that her understanding was that if COT maintained the messages on a backup tape for ten days and if they had a ten day period for which they had to incur the expense to do restoration processes, there could potentially be a \$10,000 charge for the agency to recover those.

A discussion ensued, involving Nelson, Haynes, Robb, and Myers concerning the possible postponing of discussion of a change in retention of general correspondence until the December meeting. Nelson wondered if it would be productive in the interim to at least advise agency personnel know that at some future point, the Commission would be moving to make retention of this series conform to a date certain retention, as opposed to the current elastic retention. He recommended that the Commission delay action on the actual change until perhaps the next meeting, but let people know that this action is likely to take place and that in the meantime, staff would be coming up with more specific communication and training plans. He said that one thing he was thinking of related to the orientation checklist that every new employee has to go through, affirming that they have received training or prescribed information. Nelson was suggesting that staff develop a one-page document that could be part of an agency orientation

process, so that every new employee would have some sense of what was required to manage these resources and would not end up, twenty-six years later, planning to retire and uncertain of what to do with the accumulation of records generated over that period of time.

Haynes asked the chair to restate the motion being considered. Nelson said that the objective of the motion was that the Commission revisit this retention period at its next meeting, with the intention of establishing a formal, specified retention period for this series, after discussion with legal counsel and with records officers and conducting further research, and presenting a training and educational plan to the commission at the next meeting. Haynes made a motion to that effect, and Robb seconded it.

Bensenhaver suggested that the training include the issue of destruction certificates, particularly given the potential volume of general correspondence destructions. She also requested coverage of a proposed or a suggested way of managing e-mail within Outlook. Nelson concurred with this recommendation.

Lykins recommended, in preparation for the meeting with the attorneys and the records officers, the referencing of existing management guidelines, as a way of making clear exactly what it is to which staff is referring and who would retain the data, that might help them prepare for the meeting. This might help them have a better understanding of what they're coming together to talk about, Lykins said, because his concern was that that staff could spend a great deal of time just trying to get to the basics of exactly what the issues are to which staff is referring and not have as much time as desirable to actually discuss the issues. He felt that anything that could be done to share those guidelines with them in advance, so they could come more prepared, would be helpful.

Robb thought that this was a very significant time. The information that Lykins referred to Robb characterized as sort of an Executive Summary, which has an important function in terms of getting the audience's attention. He noted that while some of this information has been presented to a select group of state government attorneys, he wondered whether this represented the same group of attorneys that would be involved with this going forward and whether they were as conversant with these decisions and guidelines.

Lykins agreed that it was a critical time and was unclear as to whether these people would be supportive of a decision, if they didn't feel they had as much information about it as they needed to really understand the implications and how the process would work and what the responsibilities were. That's why he thought it might be helpful for them to educate themselves a little bit by seeing what was intended through these guidelines.

Myers said that though he certainly agreed with and supported everything that had been discussed and he concurred that training was a KDLA mission, he also felt that it was important to face certain realities, including: (a), there is only so much you can put on a single page of paper, because we find we need to limit text to a bullet-point presentation that readers will actually pay attention to and read, and (b), when staff sent out the e-mail guidelines previously

for review, KDLA got comments back from only one agency. And, he noted, that was after presenting the material to the then CIO Advisory Council and to other groups.

Bensenhaver didn't feel that there was a need to worry about that in this case. She felt that if people were threatened with what Dennis was talking about, that is, spoliation of evidence or incurring costs to recover records in response to an open records request, that lawyers would really be attentive to it.

Myers agreed, but thought that the point was that there was going to be an impact and a burden to the agencies, regardless of how much time it takes to train people. He thought that staff could spend the next six months doing all the intensive training possible, but that when the retention period is changed, there will still be agencies that don't keep it or agencies that keep it too long or whatever. He said he wasn't saying that the effort shouldn't be made, but simply stating that staff needs to be aware of the fact that KDLA could have a blinking sign on its website, but people could still not be reading it.

Nelson thought that had always been the case and always would be, but he felt that the timing was good and that KDLA really needed to give time to the attorneys in state government as the key people, because of the uneven attention to these issues that records officers might sometime give. He thought that attorneys would see the potential impact and be more responsive. He also wondered aloud about the potential of software to include prompts to direct users or creators to make an appropriate records management decision on a message at the time of creation or receipt.

Cundy noted the foldering options available when using Microsoft Outlook. McAninch pointed out that some of the decision making happens before one ever gets into the folder.

Myers noted that another issue faced by staff, when personnel go out to do training, is how much training is teaching people records management and how much is teaching them to properly utilize Outlook for those purposes. He felt that KDLA staff should not be obliged to meet what he characterized as a basic IT staff responsibility. He observed that the problem resides with the fact that IT people within agencies don't teach their people what a folder is or how to move something into it. He said that KDLA staff has a big enough burden just teaching people that "this is a record...you have to keep it," versus how to properly folder something. He said he just wanted to reiterate that this is an added feature that staff continually has to deal with as well.

Glen McAninch stated that part of KDLA training had focused on the fact that each agency needs to develop an implementation plan, a way of dealing with this within their own environment, that one size doesn't fit all for all agencies and that each of them need to figure out how they're going to both train the employees but also handle the e-mail from a technical standpoint. He emphasized that if it was going to be handled using Outlook in folders that are on a network, then agencies need to train their employees on how to use Outlook and set retention periods. He said that he didn't feel that it was up to KDLA to implement the plan, but rather that

it was up to department staff to make clear what the retention periods and issues are, and suggest ways that an agency could handle them.

Hamilton said that in recent times, she had witnessed the retirement of a number of prominent employees and that there was more concern about whether information had been captured on a disc than whether it had been placed in a particular folder. She said it was often in the nature of "is there a disk that all this stuff can be put on?" Her point was that employees believed that if it were put on a disc and everything was saved, no one would accuse them subsequently of having destroyed anything. The result was that employees felt that the information was there, just not in any kind of order. She said that increasingly, with electronic information, employees are beginning to worry about these issues as they don't want to be accused of having destroyed anything. The result is that they basically want everything that's anywhere near their computers on a disk and, naturally it's not sorted, it's not anything, it's just on a disk.

Myers said that the problem KDLA staff has is that different records have different retention periods and while most e-mail would probably be considered correspondence, not all e-mail is correspondence. It could be something else that has a longer retention period or something else altogether. Hamilton said that this was the point she was trying to make, that all of the information was there, all saved but with no sorting to reflect its different value.

Robb noted that Myers had said that Outlook represented a rudimentary document management system, but he said that in fact, Outlook was a terrible tool for managing. He observed that there are things it can do, but there are other things it can't do. He said it gives the user a lot of authority the user probably shouldn't have. He noted that the reason it costs a thousand dollars to restore is that COT has to restore a whole lot of data just to get at one person's material.

Hamilton repeated that in her mind, saving to the disk was becoming the answer, but Myers disagreed, saying that the problem with that was that you were capturing e-mails that you don't want to capture or that shouldn't be captured. Hamilton said she didn't argue with that; she said she was just saying that it's so confusing that it was becoming the option of choice. In addition, she said the overriding issue now had become: don't destroy. As a result, she felt that nobody was making judgments on retention at all, with employees believing that they will protect themselves by not destroying anything. They would rather that anybody see anything than be personally accused of destroying something. As a result, she felt, the disk route continued to be seen as a solution.

Myers pointed out that if one were to query the Office of the Attorney General, he felt they could confirm that a lot of the problems they were encountering now had their origin in people keeping things they should have destroyed, and he felt that this was just as problematic and just as legally sensitive as know, accidentally deleting something that should have been kept. In some cases, it could be worse.

Cundy noted that in his experience, attorneys generally say that the materials you keep are going to hurt you a lot more than those you destroy. Myers said that this was because it was often the

casual correspondence that probably shouldn't have been engaged in to begin with that was going to lead to a lawsuit. It was not, he felt, a case of "oh, we accidentally destroyed a record after two years that should have been kept four years." Myers emphasized that if you keep everything, you're also keeping all of the spam and the junk mail. He said again that the problem with e-mail was volume. It is not the technological issues, it is the fact that you deal with so much of it everyday that it's hard to actually manage. He said that this was where KDLA training came in; it was in getting people to realize that there were things that one could delete immediately and then there were things that needed to be kept longer term. He said that if one actually did that, instead of waiting until being at the point of retirement and trying to go back after the fact, or after two years or after five years or whatever, you don't have that burden of having to sit there for three months making those decisions.

Nelson felt that it's an opportunity to get the issue in front of people and have them pay attention more than KDLA has ever had that opportunity before. He acknowledged that there were going to be people who are not going to pay attention and who are not going to do as the department would like for them to do, but at least the commitment here is to let people know that KDLA and this commission are going to address this issue. Nelson retraced the general discussion. He said that as he understood it, by the next meeting, there would be a proposal on how to move forward and how the training would happen, but that in the interim, staff would be talking with people, so that there would be some discussion in state government circles. Then, at the next meeting, it should be possible to actually implement or adopt a formal training approach. Nelson said he had said a "one-pager" because of his belief that if you give people a twenty page report, there would be little impact or engagement. He said it was important to find other ways to get some of those background materials to them and to talk about records issues.

Haynes made a motion to table the change to Series M0002, General Correspondence, until the December 14, 2006, meeting of the commission; in the interim, PRD staff will consult with various agencies' legal counsel and records officers and conduct further research, after which PRD staff would present a training and educational plan to the commission, seconded by Robb. The vote by members and representatives present was unanimous.

McAninch made a motion to adopt the schedule revisions for Series M0001, Official Correspondence, and Series M0018, Informational and Reference Material, seconded by Dr. Birdwhistell. The vote by members and representatives present was unanimous.

Environmental and Public Protection Cabinet – OFFICE OF HOUSING, BUILDINGS AND CONSTRUCTION

Getman presented these additions and changes. Series 05359, Project Files is being added to the schedule after having been mistakenly closed. Series 01436, Fire School Records and Series 05362, Electrical Contractor Certification, are being closed.

The Office of Housing, Buildings and Construction (HBC) operates educational, licensing and inspection programs and administers codes and standards relating to hazardous materials, fire

prevention and the construction and maintenance of buildings and structures. The following statutory Boards have varying degrees of jurisdiction in these areas: Board of Housing, Buildings and Construction (KRS 198B.020); Board of Heating, Ventilation and Air Conditioning (KRS 198B.652); Board of Home Inspectors (KRS 198B.704); Board of Boiler and Pressure Vessels (KRS 236.020); Manufactured Home Certification and Licensure Board (KRS 227.560); Recreational Vehicle Certification and Licensure Board (KRS 227.565) and Liquefied Petroleum Gas Industry Advisory Board (KRS 234.171). Three Committees have varying roles in the overall mission and operations of the Office: Electrical Advisory Committee (KRS 227.530); State Plumbing Code Committee (KRS 318.071) and State Plumbers Examining Committee (KRS 318.080). The Office of Housing, Buildings and Construction also serves as the headquarters of the State Fire Marshal's Office.

Getman noted that the fire school function had been transferred to the Kentucky Community and Technical College System under HB 631, leading to removal of Series 01436, Fire School Records, from HBC's schedule. Certification for electrical contractors no longer exists. It has been upgraded to a licensing.

Dr. Birdwhistell made a motion to adopt the schedule additions and changes, seconded by McAninch. The vote by members and representatives present was unanimous.

Justice and Public Safety Cabinet – DEPARTMENT OF STATE POLICE

Brookman presented this change. The change is to Series 04650, Carry Concealed Weapons Imaging System. The Series title is being changed to CCDW/LEOSA License Application System. Disposition is being changed from "Maintain imaging system updating as needed. Destroy application packet six months after input and verification;" to "Maintain imaging system, updating as needed. Destroy hard copy of application/renewal packet and supporting documents in file after input and verification. Destroy electronic record one year after date of denial, revocation, or recall. Destroy all records concerning applicant six months after permanent expiration of license."

The Department of State Police was formed on July 1, 1948, when legislation was signed giving its officers full police powers, both traffic and criminal. All offices, facilities, equipment, duties, powers and funds of the State Highway Patrol were transferred to the Department. In 1956, the Department was abolished and it became the Division of Kentucky State Police in the Department of Public Safety. From 1973 to 2004, it was part of the Justice Cabinet. In 2004, the Department became part of the Justice and Public Safety Cabinet, by order of the Governor. Its duties and powers are contained in KRS Chapter 16. KRS 16.060 details the duties and powers of the Commissioner and officers of the Kentucky State Police. It is the duty of the Commissioner and each officer of the Department to detect and prevent crime, apprehend criminals, maintain law and order throughout the state, collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals, and enforce the criminal as well as the motor vehicle and traffic laws of the Commonwealth.

The KSP must also provide security of state facilities located in Frankfort, highway enforcement, and water safety enforcement, as provided in KRS Chapter 235.

The Kentucky State Police was authorized by KRS 237.110 to issue and renew licenses to carry concealed firearms or other deadly weapons, or a combination thereof, to qualified persons. Law Enforcement Officers Safety Act (LEOSA) licenses are issued to retired peace officers. Carry Concealed Deadly Weapon (CCDW) licenses are issued to citizens.

Brookman summarized the changes briefly.

Hamilton made a motion to adopt the schedule revision, seconded by Ms. Smith. The vote by members and representatives present was unanimous.

State University Model Schedule – Animal Diagnostic Laboratories

Getman presented these changes and additions. Series being added are Series 05518, Test Validation Records; Series 05519, Proficiency Testing Reports; and Series 05520, Regulatory Testing Report Forms. The disposition of Series 05453, Diagnostic Files is being changed from “Indefinite, Retain Final Report permanently. Destroy balance of file after seven years;” to five years. The disposition of Series 05492, Quality Control Files, is being changed from seven years to five years.

The first Livestock Diagnostic Laboratory in the state of Kentucky opened about 1976 and was located in Frankfort. In 1978 the lab was moved to Lexington and placed administratively under the University of Kentucky system. This was partly to enhance the connection of the Laboratory to the University research capabilities. A Veterinary Center was opened later at Murray State University to provide better coverage in the western half of the state. The diagnostic tests performed by the Centers fulfill the statutory requirements for certifying the health of livestock animals prior to consigned sale in the state and/or transport into or out of the state. Their labs receive referrals for diagnostic testing or autopsies of animals from veterinarians, the State Veterinary Office within the Agriculture Department and from private owners. The Lexington based Center employs 70 staff, which includes 12 faculty members.

The Breathitt Veterinary Center (BVC), located in Hopkinsville, KY, is a fully accredited (by the American Association of Veterinary Laboratory Diagnosticians) animal disease diagnostic laboratory serving western Kentucky and parts of bordering states. The BVC, in fulfilling its missions of diagnostics, research, education, and field service, is staffed by 50 employees across various scientific laboratory sections. The facility processes over 15,000 diagnostic cases per year.

Both Centers are now combining efforts to provide the first fully functional and integrated animal health reporting service in the state. A major result of this effort will be advances in the early detection and control of animal diseases.

Getman summarized the additions and changes. In response to a question by Belding, he noted that the final reports in Series 05453, Diagnostic Files would be maintained for varying retention periods, depending on the disease, at the State Veterinarian's Office. This would make permanent retention of the final reports by university diagnostic laboratories unnecessary.

Smith made a motion to adopt the schedule additions and revisions, seconded by McAninch. The vote by members and representatives present was unanimous.

University of Louisville – Grawemeyer Awards Committee

Brookman presented these additions. Series being added are Series 05514, Grawemeyer Award Nominee File; Series 05515, Grawemeyer Committee Records; Series 05516, Grayemeyer Award Winning Works; and Series 05517, Grayemeyer Award Presentations.

The University of Louisville is a state supported research university that joined the university system in 1970. Its mission is to be a premier, nationally recognized metropolitan research university with a commitment to the liberal arts and sciences and to the intellectual, cultural, and economic development of its diverse communities and citizens. It is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

The Grawemeyer Awards were created in 1984 by H. Charles Grawemeyer to honor powerful ideas in five fields in performing arts, the humanities, and the social sciences. Awards are given for Music Composition, Ideas Improving World Order, Education, Religion, and Psychology.

Brookman summarized the additions. Cundy noted that these series are broad enough so that they could be adapted for use by all public universities.

Smith made a motion to adopt the schedule additions, seconded by Haynes. The vote by members and representatives present was unanimous.

Following up on a request from the June 8, 2006 meeting of the commission, Cundy distributed summaries of databases housing certain records found on the retention schedule for the Department for Environmental Protection, along with Description and Analysis forms for appropriate record series.

Other Business

Nelson recognized Belding, who said that October 8-14, 2006 is the fifth annual Kentucky Archives Week. The theme for 2006 is Family Heritage. He noted that various archivists around the state would be holding open houses at their institutions to try to raise awareness of and support for the work of archivists. A poster will distributed and there is a website at www.archivesweek.ky.gov which has general information about events, a planning guide, a sample press release, a sample proclamation, submissions for Certificates of Merit and a statewide events calendar.

Belding noted Chair Nelson's impending retirement. Belding informed the Committee they would be receiving an invitation to attend the retirement reception for Chair Nelson's retirement reception to be held on Monday, September 25, 2006 from 2:00-4:00 p. m., at the department. A successor has not been named.

Birdwhistell moved that department staff draft a resolution expressing the appreciation of the commission for Nelson's dedicated service and leadership, seconded by McAninch. The vote by members and representative present was unanimous.

There being no further business, Nelson adjourned the meeting at 11:15.